TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~507.~~ 980

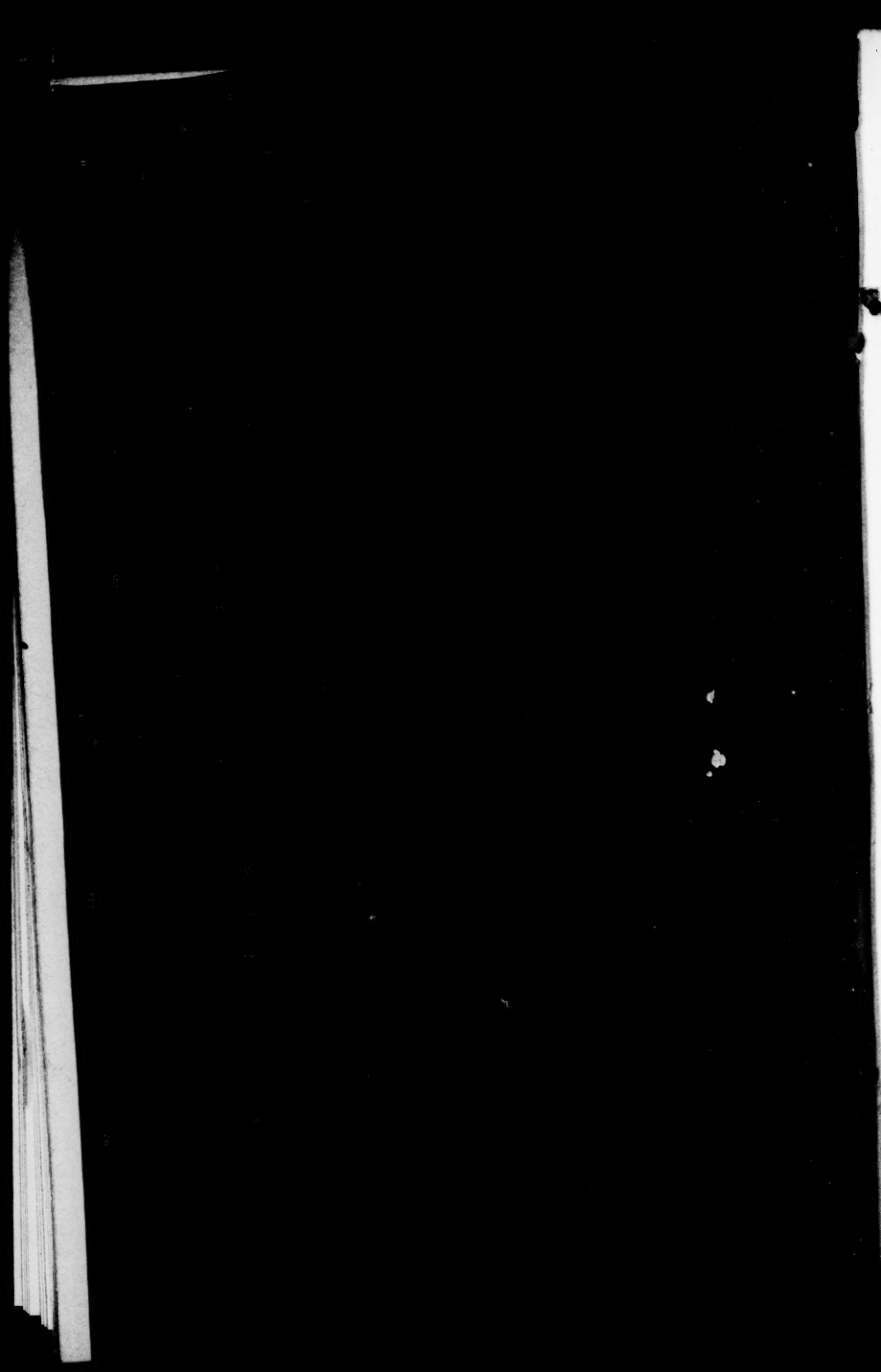
THE TOWN OF GRAND CHUTE, APPELLANT,

vs.

GEORGE W. WINEGAR, GEORGE B. GOODWIN, HENRY HEWITT, AND THEODORE CONKEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED FEBRUARY 15, 1871.



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1 Circuit court of the United States of America for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district, on the first Monday, [being the third day,] of October, A. D. 1870—present, the Honorable Andrew G. Miller, district judge, presiding, Charles S. Hamilton, marshal, Edward Kurtz, clerk—among other, the following proceedings were had, to wit:

THE TOWN OF GRAND CHUTE, COMPLAINANT,
vs.
GEORGE W. WINEGAR, GEORGE B. GOODWIN, Henry Hewitt, & Theodore Conkey, defendants. } In equity.

Be it remembered that, heretofore, to wit, on the 5th day of August, A. D. 1870, came the above-named complainant, by its solicitor, Mr. Geo. W. Lakin, and filed its bill of complaint against the above-named defendants, as follows, to wit:

Bill of complaint.

To the judges of the circuit court of the United States for the eastern district of Wisconsin.

2 The Town of Grand Chute, a municipal corporation created by and under the laws of the State of Wisconsin, and a citizen of said State of Wisconsin, brings this its bill against George W. Winegar, of Union Springs, in the State of New York, and a citizen of said State of New York; George B. Goodwin, of Milwaukee, in the State of Wisconsin, and a citizen of said State of Wisconsin; and Henry Hewitt and Theodore Conkey, of the city of Appleton, in said State of Wisconsin, and citizens of said State of Wisconsin.

And thereupon your orator complains and says that, on the 26th day of April, A. D. 1870, the defendant George W. Winegar, commenced an action of debt in this court, against your orator to recover a large sum of money, to wit, the sum of about ten thousand dollars and upwards, alleged by said George W. Winegar to be due to him from your orator. And your orator states that said action is [brought] on several bonds, nine in number, and numbered 1, 2, 3, 4, 5, 6, 7, 8, and 12, with the coupons annexed thereto, all of said bonds except the one numbered 12 being for one thousand dollars each, and said bond numbered 12 being for five hundred dollars, and all bearing date March 12th, A. D. 1855, with interest annually at the rate of ten per cent. per annum, and all of said bonds having coupons or interest warrants
3 appended thereto for the annual interest aforesaid; and each and all of said bonds maturing in fifteen years from the date thereof, copies of which bonds and coupons are annexed to the declaration in said action of debt, and to which, for the greater certainty, your orator asks leave to refer.

And your orator shows that the said George B. Goodwin, Henry Hewitt, and Theodore Conkey, and other persons whose names are unknown to your orator, for a very small and nominal consideration, or

without any consideration, became possessed of said bonds and coupons. And thereupon the said George B. Goodwin, afterwards, to wit, on or about the day of , went from Wisconsin to Union Springs, in the State of New York, and to the bank of one C. T. Backus, the brother-in-law of the said George B. Goodwin, and there found the defendant, George W. Winegar, who was then and there a teller in said bank.

And your orator further shows that the said George B. Goodwin then and there made and attempted to make a [colorable] and sham sale of said bonds and coupons to the said George W. Winegar, for the purpose of enabling the said George B. Goodwin, Henry Hewitt, and Theodore Conkey and others, the real parties in interest, all of whom were and are citizens of the State of Wisconsin, to bring and prose-
4 cute an action on said bonds and coupons against your orator in the United States circuit court for the district of Wisconsin, and for the purpose of preventing your orator from effectually interposing and urging its just, legal, and equitable defences to a recovery of judgment against your orator on said bonds and coupons; and your orator shows, that the said George B. Goodwin, then and there acting for himself, and for and on behalf of the other defendants herein, requested the said George W. Winegar, [who was a teller in said bank,] to allow his name to be used as plaintiff in said action against your orator, which the said George W. Winegar consented to do. But your orator shows that no real sale or transfer of said bonds and coupons or of any of them, was ever made to said George W. Winegar; that said Winegar had then recently been through bankruptcy, and had been discharged from his debts; that from and after his said discharge to said time of said pretended sale of said bonds and coupons to him, he had been acting as teller in said bank of said Backus, on a salary of eight hundred dollars per year, without any other income; that he had no money or other effects with which to purchase said bonds and coupons.

And your orator shows that, to give said sham and fraudulent
5 sale of said bonds and coupons to said Winegar an outside show and appearance of fairness and good faith, the said George B. Goodwin and George W. Winegar then and there agreed together that the said Winegar should execute to the said George B. Goodwin, or to the other or some of the other parties in interest, his, said Winegar's, two certain promissory notes, in all for the sum of about fifty-one hundred dollars, on long time, to wit, in about equal payments in one and two years, as the only consideration for said pretended sale and purchase. That said Winegar at that time was altogether irresponsible in a financial point of view, and that no security whatever was given by the said Winegar for the payment of said notes, and none was required.

And your orator shows that said bonds were not then, nor at any time, produced, shown to, or delivered to said Winegar, and that he has never had them, or any of them, in his possession or under his control; but that said bonds and coupons have at all times been in the possession and under the control of the defendant George B. Goodwin aforesaid, and the other defendants and parties who are citizens of the State of Wisconsin, the same State by whose laws your orator was created, and in which it resides.

And your orator shows that the said George W. Winegar, so
6 as aforesaid, being entirely irrespo'sible, and having no real interest in said bonds and coupons, and desiring to have no interest therein, consented to the plan and arrangement of standing as

plaintiff in said action, but gave the matter no attention or concern; and, after said action had been pending for several weeks, was altogether ignorant as to whether or not said notes which he had signed were negotiable, or whether they had ever been delivered, or to whom they were payable.

And your orator further shows that several years ago the said defendants George B. Goodwin, Henry Hewitt, and Theodore Conkey, who were then also citizens of the State of Wisconsin, instituted a suit in this court in the name of one Henry Decker, jr., who was also a mere nominal plaintiff on some of the same coupons; that said last-named action was commenced on the twenty-first day of October, A. D. 1861; that your orator employed counsel and interposed the proper defences; that said last-named action remained in court undisposed of and pending until the twenty-first day of June, A. D. 1867, when the same was discontinued by the plaintiff, all of which will appear in and by the records of this court.

And your orator shows that the said George B. Goodwin and the said Henry Hewitt, were also parties plaintiffs in interest in the said
7 last-named action, and that the said Henry Decker, jr., had no interest therein, but that his name was used for the purpose of obtaining jurisdiction in form in this court.

And your orator shows that the said George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Conkey well knew of the existence and pendency of the said action, in which the said Henry Decker, jr., was plaintiff, and of the full nature, extent, and character of the same, and of the supposed cause and causes of action set forth therein.

And your orator further shows that, on or about the 19th day of September, 1857, the said Henry Hewitt commenced an action in the circuit court of Outagamie County, State of Wisconsin, against your orator, on certain coupons or interest warrants attached to said bonds, and that the matter was there litigated, and an appeal was taken from said circuit to the supreme court of the State, and the plaintiff failed to recover judgment upon said coupons, and your orator shows that no judgment has ever been recovered against your orator upon any of said bonds or coupons.

And your orator further shows that, on or about the 12th day of March, 1855, it caused notice to be given in the New York City stock-market, and in the other stock-markets of the United States, of the illegal and fraudulent issue of said bonds, and that the same
8 would not be paid; that such notice was published through the financial columns of the New York Tribune and other newspapers having a general circulation, and also through the columns of the Milwaukee Sentinel, Green Bay Advocate, and other newspapers having a general circulation in the State of Wisconsin.

And your orator shows that the said bonds mentioned in the said action, in which the said George W. Winegar is the nominal plaintiff, purport to have been issued under and by virtue of an act of the legislature of the State of Wisconsin, entitled "An act to authorize the towns therein named to subscribe for plank-road stock," approved February 10, 1854, and to which said act your orator begs leave to refer as fully and completely as if the said act were set forth at length in this bill of complaint.

And your orator shows that, in and by the first section of said act, the several towns therein named are, in terms authorized, under the restrictions and conditions thereinafter mentioned to subscribe to the capital stock of the Wolf River Branch of the Winnebago Lake and

Fox River Plank-road Company "such amounts, not exceeding ten thousand dollars for any one town, as may be declared by the board of directors of said company necessary for the completion of said road at the time of such subscription, and to pay for the same in bonds of the town or towns so subscribing."

9 And your orator further shows that the said "Wolf River Branch of the Winnebago Lake and Fox River Plank-road Company" never did, nor did the directors of said company or the directors of the Wolf River Branch Plank-road Co., before the issuing of said bonds, or at any time declare what sum or that any sum or amount was necessary for the completion of said road at the time of the subscription therein named, and for want of such declaration your orator shows that said bonds were not issued in accordance with said act, and are void.

And your orator further shows that the first section of said act purports to authorize the several towns therein named, upon certain conditions and under certain restrictions therein specified, to subscribe to the capital stock of the "Wolf River Branch of the Winnebago Lake and Fox River Plank-road Company," and to pay said company such subscription in bonds of the town so subscribing.

Your orator shows that it never did in any way or manner or at any time subscribe any amount or sum to the capital stock of the "Wolf River Branch of the Winnebago Lake and Fox River Plank-road Company, specified in said act, and your orator shows that no authority whatever, by resolution or otherwise, was ever given or granted to any

10 officer or officers of said town of Grand Chute to issue any bonds in payment of any supposed subscription of your orator to said Plank-road Company, or for any other purpose. That the said defendant Theodore Conkey, as chairman of the board of supervisors of said town of Grand Chute, had no authority whatever to sign said bonds or any of them, or to affix the corporate seal of said town thereto. That all of said acts on the part of said Theodore Conkey were and are fraudulent, and said several pretended bonds are void.

And your orator further shows that each of said pretended bonds declared on in the suit in this court against your orator, in which the said George W. Winegar is the nominal plaintiff, recites, among other things, as follows;

"Whereas the legislature of the State of Wisconsin, on the 10th day of February, A. D. 1854, passed an act authorizing and empowering the board of supervisors of the town of Grand Chute to subscribe for the town of Grand Chute ten thousand dollars to the capital stock of the Wolf River Branch Plank-road Company, and to pay for the same in the bonds of the town, payable in fifteen years."

Now your orator shows that each and every of said pretended bonds, in and by such recital aforesaid, states upon its face that which is not in accordance with the said act of the legislature approved Feb-

11 ruary 10th, 1854, and states what is untrue and false, as no authority whatever is given in and by said act of the legislature authorizing your orator to subscribe to the capital stock of the "Wolf River Branch Plank-road Company," or to issue its bonds to said company in payment of any subscription.

And your orator shows that each and every of said pretended bonds, on which suit is brought and is now pending in this court, in which the said George W. Winegar is the nominal plaintiff against your orator, purport, on their face, to have been issued to the "Wolf River Branch Plank-road Company," a company not known, mentioned, or referred to in or by said act of the legislature, under and by virtue of which said

pretended bonds are claimed to have been issued. And your orator, therefore, insists that said bonds are fraudulent and void upon their face.

And your orator shows that the said bonds and coupons were not in any manner executed, delivered, or negotiated by your orator, and have never been recognized or in any manner affirmed by your orator.

Your orator shows that, before and at the time of the issuing of said pretended bonds, the said Theodore Conkey was chairman of the board of supervisors of said town of Grand Chute. That the said Theodore Conkey and Henry Hewitt combined and conspired with Reeder Smith,
12 the president of the Wolf River Branch Plank-road Company, to obtain and procure the fraudulent issuing of said bonds for their own private and individual gain and speculation. That, pursuant to such fraud, intent, purpose, and design, the said Theodore Conkey, Henry Hewitt, and said Reeder Smith, on or about the 17th day of May, 1854, published and caused to be published and circulated among the people and voters of the town of Grand Chute a certain notice and proposition in the words and figures following, to wit:

"To the electors of the town of Grand Chute:

"The Wolf River Branch Plank-road Company make the following proposition to the electors of the town of Grand Chute:

"That in case a majority of the electors shall be in favor of the issuing the bonds of the town of Grand Chute for the completion of the Wolf River Branch Plank-road, in the town of Grand Chute, the bonds to be issued by said town, and the proceeds of the same are to be placed in the hands of a committee of seven, to be composed as follows: The three supervisors of said town of Grand Chute, the road stock commissioner, to be appointed by the board of supervisors for said town, and three of the directors of said plank-road company, to be chosen by said company, which said commissioners shall receive
13 and dispose of the bonds, receive proposals, locate, build, and manage in every respect the road to be built in the said town, as far as the proceeds of the bonds will go in building said road.

"By order of the board of directors.

"REEDER SMITH, *President.*

"A true copy. Attest:

"W. SCOTT, *Secretary.*

"APPLETON, *May 17th*, 1854."

And your orator shows that, afterwards, to wit, on the 20th day of May, 1857, [1854,] a false, fraudulent, pretended and sham election was held in said town of Grand Chute; that those who voted in favor of the issue of said bonds were induced to do so by said proposition; that, under color of said pretended election, and in fulfillment of said proposition, a committee of seven was organized; that the said Theodore Conkey was chairman of the board of supervisors of said town, and as such was a member of said committee; that the said Reeder Smith was a director and president of said Wolf River Branch Plank-road Company, and as such was chosen a member of said committee.

And your orator further shows that, afterwards, to wit, on or about the 15th day of January, 1855, in pursuance of said fraudulent purpose, a corrupt and fraudulent agreement was entered into at the said
14 town between the said Reeder Smith, Theodore Conkey, and Henry Hewitt, whereby it was agreed that said Hewitt should receive a

contract for building said road at an extravagant price, that is to say' at a price greatly above what it would cost to build the same, and should take said bonds in payment: that the location of the road should be changed to a route which would greatly benefit said Conkey's property, much more than if it remained on the previously-located line, but which would be much less advantageous to your orator and to the said plank-road company, and would be much more expensive; and that the said Conkey, who was a merchant and provision dealer in said town, should also have the advantage of furnishing the supplies for the road, and should receive therefor a proportionate share of said bonds; and that said Smith should receive one thousand dollars of said bonds to be applied in payment of a debt due him from said company; and that the said Smith and Conkey should accomplish the change in the location of the road, and the letting of the contract, and the delivery of the bonds to said Hewitt by means of their official position, influence, and votes, as members of said committee.

And your orator shows that, in pursuance of said corrupt and fraudulent agreement, said Smith and Conkey, by their votes and
15 influence as aforesaid, caused said committee of seven illegally and wrongfully to abandon a desirable line of level road two miles in length, which had been graded and partly planked, at large expense, to wit, at the expense of two thousand dollars, and to adopt a circuitous route on which nothing had been done, and which required an expensive bridge, and much heavy grading to complete, greatly decreasing as well the value of your orator's stocks as the advantage which your orator would otherwise have received from the building of said road.

And your orator further shows that, in further pursuance of said corrupt agreement, said Conkey and Smith afterwards, to wit, on the 8th day of February, 1855, by their votes and influence in their official position as members of said committee of seven, caused said committee to appoint them, the said Conkey and Smith, a special committee to let the contract for building said road; and, having been so appointed, did, in further pursuance of said corrupt agreement, fraudulently and corruptly execute and interchangeably deliver with said Hewitt, duplicate originals of a contract of the tenor and effect following, to wit:

"This article of agreement, made and entered into this 10th day of February, 1855, between Henry Hewitt, of Kauka'na, Outagamie
16 County, Wisconsin, party of the first part, and the Wolf River Branch Plank-road Company and the town of Grand Chute, of the county and State aforesaid, parties of the second part, witnesseth:

"That the said Hewitt hereby covenants and agrees to and with the said parties of the second part, for himself, his heirs, executors, and administrators, that he will furnish all material and work necessary to build five miles of said compan*ie*'s road, beginning from junction of said road with the Appleton and Kauka'na road, and running from there to the west line of the town of Grand Chute, as located by the committee of seven, so called, and will build and complete the first three miles by July 1st, 1855, and the remainder at the rate of one mile every month thereafter, and complete the same in a good and workmanlike manner, with a double grade 20 feet wide, and two good ditches sufficient to carry off all the water, and cut out the timber thirty-three feet wide, with no grade greater than one foot to sixteen, and complete the same in good and workmanlike manner, within the time aforesaid, to the acceptance of said company's engineer.

"And the said company agree to pay the said Hewitt, his heirs, executors, or administrators, twenty-five hundred dollars per mile for all of

the said road of a natural grade, and 12 cents per yard for all extra excavations, and twelve cents per yard for all extra embankment,
17 and twenty cents per cubic foot for all timber in bridges, (no embankment is extra unless the earth is carried 100 feet.) said payment to be made in the manner following: Nine thousand dollars in bonds of the town of Grand Chute, on the execution hereof, and the balance in cash in monthly estimates, said estimates to begin after work shall have been done to the amount of nine thousand dollars; said bonds to be taken at their face or par value. The said parties of the second part hereby reserve to themselves the right of changing the location of that part of said road which lies between the west line of section 29 and the west line of said town, at any time before the balance of said road shall be completed.

"The said Hewitt, in consideration of the covenants and agreements herein contained, on the part of said company, hereby releases the property of said company, and the said company itself, from all liability on this contract, except so far as the said portion of the road to be completed by him will go, hereby covenanting that all rights which he may have, and claims which he has, or may have after, under this contract, shall & may be enforced against said five miles of road, and against no other property whatever of said company.

"In testimony whereof the said parties have executed this agreement the day and year first aforesaid, the said company and the said
18 town acting by Reeder Smith, the president of said company, and Theodore Conkey, the chairman of the board of supervisors of said town, who were appointed a special committee to let this contract, by a resolution of the committee of seven, so-called, passed the 5th day of February, 1855, reference being had to the proceedings of the board of directors of said company, at a meeting held May 17th, 1854, for the constitution and authority of said committee of seven.

(Signed) "HENRY HEWITT,
"REEDER SMITH,
"*Pres't of the Wolf River Branch Plank-road Co.*,
"THEO. CONKEY,
"*Committee.*

"In the presence of—
"FREDERICK PACKARD."

And your orator further shows that the prices specified in said contract were unreasonable and extravagant, and were intentionally and purposely made so by said Conkey and Smith and Hewitt, in order to defraud your orator; and for the same purpose said company was released from liability on said contract, by the terms thereof; and that for the same purpose it was therein provided that the work should be done to the acceptance of the company's engineer; and also that the whole nine thousand dollars in bonds should be paid in advance; that, in pursuance of said corrupt and fraudulent agreement, said Conkey,
19 without any legal or proper authority, subscribed, on behalf of said town of Grand Chute, for ten thousand dollars of capital stock of said company, and to issue bonds to the amount of said subscription; and, without authority, subscribed your orator's name to a promise to take ten thousand dollars of stock in said company, and agree to pay for the same all at once, in bonds of your orator, instead of paying by installments, according to the usual terms of such subscriptions.

That, in further pursuance of said corrupt and fraudulent agreement, said Smith received what pretended to be bonds or writings obligatory of your orator to the amount of one thousand dollars, for his own use; and said Hewitt received nine thousand dollars in amount of said pretended bonds, being part and parcel of the said pretended bonds, with coupons attached, on which said George W. Winegar has brought suit in this court. And the said Hewitt afterwards passed over three thousand dollars in amount of said bonds to said Conkey.

And your orator shows that the said Hewitt neglected to comply with the terms of said corrupt agreement, and neglected and refused to build five miles of said road, and neglected to complete any part of
20 said road in a good workmanlike manner, or any other manner whatever; and did not make a double grade twenty feet wide, or sufficient ditches to carry off the water, and did not cut out the timber thirty-three feet wide, and did not finish three miles, or any part of said road, by July 1st, 1855, or any other time, and never fully complied with any agreement in said corrupt contract; and your orator shows that the work done by said Hewitt was entirely worthless and valueless to your orator, and to said company.

And your orator shows that, in further pursuance of said corrupt and fraudulent agreement, long after the time for completing said contract had expired, by the terms thereof, and after the said company had ceased to build any road, and had become absolutely and hopelessly insolvent, to wit, July 30th, 1857, one S. G. Callahan, who had been appointed engineer of said company, at the request of said Smith, Conkey, and Hewitt, [said Smith then still being the president of said company,] made a pretended estimate of said work done by said Hewitt, and a pretended acceptance of said job, without any notice to, or any knowledge of your orator; that said estimate and acceptance were false, and a fraud against your orator, and against said company.

21 And your orator shows that, solely by reason of the corrupt and fraudulent agreement, proceedings, and maneuverings aforesaid, the stock of the said company became, was, and ever has since been, entirely worthless, and your orator never received any benefit whatever from said supposed stock, or from said contract, or from the issue of said pretended bonds or coupons, and your orator insists that said pretended bonds and coupons are void.

And your orator shows that said bonds and coupons are entirely without any consideration; that your orator never authorized the issuing of said bonds, and has never recognized or affirmed their validity in any way or manner, but has taken every prudent and careful means of protecting the public and innocent parties, and guarding them against the imposition, and against investing anything in said pretended bonds.

And your orator shows that it has been repeatedly sued on the coupons of said bonds, and been put to great trouble, labor, and expense in defending against the unjust prosecution of suits against your orator, and your orator has good reason to believe, and does believe, that it will be continually harrassed and vexed by and with a multipli-
22 city of suits on said bonds and coupons by adventurous litigants and amateur speculators, who may become possessed of them, unless this court shall adjudge and decree said bonds and coupons to be fraudulent and void, and shall order and decree the same to be annulled and cancelled.

And your orator further shows that, during the time when the said Conkey, Smith, & Hewitt, were so endeavoring to procure the fraudulent issue of said bonds, and after the same were issued, the said George B.

Goodwin lived and resided in the town of Menasha, adjoining the town of Grand Chute, and was, and has for a long time been, acquainted with and informed of the whole business aforesaid, and of the fraudulent nature and character of the same; and your orator shows also that the said George W. Winegar knew and was informed of all and singular said matters and things.

And your orator shows that the said fraudulent acts in and about the procuring said pretended bonds to be issued, were so public and notorious, and said pretended bonds upon their face were so manifest and palpable a fraud that said pretended bonds were never regarded as of any value, and never had any market value, and never passed from hand to hand, like ordinary negotiable paper and stocks, and
23 were really never in the market in any commercial sence, and no one, so far as your orator can learn, has ever given or parted with any money or other thing of value for any of said bonds or coupons; and your orator shows that the said George W. Winegar paid nothing whatever, and parted with nothing of value for any interest in said bonds, and never intended to pay anything for the same, and never had any right or title whatever in or to said pretended bonds or coupons, or any of them; and your orator shows that no man has ever been deceived by taking, purchasing, or receiving any of said bonds or coupons for regular legitimate stocks or securities.

To the end, therefore, that the defendants, and each and every of them, may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their and each of their several and respective corporal oaths, and according to their and each of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to all and singular the matters and things hereinbefore stated, and to the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they, and each of them, are required to answer, that is to say:

24 1st. Whether the defendant George W. Winegar, on or about the 26th day of April, 1870, commenced an action of debt in this court against your orator, The Town of Grand Chute, on the several bonds and coupons above herein specified, and whether said action is still pending in this court.

2nd. Whether, long before and at the time of the commencement of said action on said bonds and coupons, you were a citizen of the State of New York, and resided at Union Springs, and were engaged as teller, or in some capacity in some bank, of which Mr. C. T. Backus was and is the owner, proprietor, manager, or in which he was interested, and where did and do all the other defendants in this bill reside.

3. Whether the defendant Geo. B. Goodwin, before, at, or about the time, or after the commencement of said action, came to Union Springs, and to the bank in whose employ you was, and had an interview with you, and whether he offered you any bonds, or the bonds and coupons on which you have sued in this court, and whether said bonds and coupons were then, or at any time, produced to, and were examined and taken into possession and kept by you; and on what terms and conditions were said bonds offered to you.

25 4. Whether you did or did not take said bonds, or agree to take them, as an accom'odation to the defendant George B. Goodwin and others, merely for the purpose of having suit brought thereon in the United States court; and was it not understood by and between you and Mr. Goodwin that you and he and Henry Hewitt and Theodore Conkey, or some one or more of them, were interested directly in said

bonds, and that the suit was to go on in your name, but for their benefit or for the benefit of some one or all of them, as well as for you.

5. When did you first know of the existence of said bonds and coupons; how did you become possessed of such knowledge; by and through whom were you informed of their existence, and where? And if you state that you purchased the bonds and coupons sued on of the defendant Geo. B. Goodwin, then state when and where and how you purchased them; whether they were shown to you at the time of such purchase; whether you made any inquiries in the stock market of New York, or elsewhere, of their value, or any inquiry beyond the statements of Mr. Goodwin; what consideration you paid or agreed to pay for said bonds; whether you paid any cash down, or gave or parted with any other thing of value for said bonds; whether you ever saw the law or the act of the legislature by or under which said bonds were sup-
26 posed to have been issued; and, if so, when, where, and for what purpose did you see it? Did you advise with Mr. Backus, or with any other banker or person, before making the purchase, in regard to the safety or propriety of the contemplated purchase; and, if so, with whom did you advise; and for whom did Mr. Goodwin profess to act in negotiating the sale of the bonds to you, and where did he say the bonds were at the time of the interview with you; in whose name was the sale to you made? Was there any bill of sale made out and delivered to you of said bonds? If so, give an exact copy of the same, & of any & every writing received by you relating to said bonds. If you state that you gave your note or notes in payment for the purchase of said bonds, state who wrote said notes; when and where were they written and signed; to whom or to whose order they were payable; for what amount were said notes; when were they to mature; what rate of interest did they bear; was any indorser or other security furnished by you or by any person for the payment of said notes, and was the payment secured in any way; and where are said notes? Give a copy of said notes. What salary did you receive for your services in the bank; and had you any, and, if so, what and how much, annual income,
27 at the time of said purchase, over and above your salary in the bank? At the time of such alleged or supposed purchase of said bonds, had you been through bankruptcy under the laws of the United States, and did you voluntarily apply and file your petition for that purpose, or was a petition filed by your creditors; and were you, and, if so, where were you, discharged from your debts by the bankrupt court? And at the time when you claim to have purchased the bonds & coupons on which you have sued, how much were you worth in money and property over and above the debts you then owed, and over and above such property as was exempt by law from execution; and in and of what did your effects consist? And how, by, and from, and out of what means, moneys, and effects, did you expect to meet and pay the said notes given in payment for said bonds? Have you, within the last two years, or since your discharge from your debts in bankruptcy, made or rendered to the assistant assessor of the district in which you reside a list or return of the amount of your income, gains, & profits, pursuant to the internal revenue laws of the United States, & have you paid any income tax thereon; if so, how much, when, where, & to whom?

6. How long have you been acquainted with, or engaged as
28 teller or otherwise in, the banking business; and have you been, and how long have you been, posted and acquainted in and with the stock market, and with stocks in New York and other eastern cities; and have you kept yourself well informed in regard to the rise and fall

and value of bonds and stocks in the market? And state whether the bonds sued on, at the time you claim to have purchased them, had any market value, and did they ever have any; and, if so, what market value, at any time; were they ever recognized in the stock market; did they have any status, or were they ever mentioned or quoted in the columns of any stock, financial, or commercial newspaper; and, if so, when, where, and in what paper, and what value was there assigned to them?

7. At the time you claim to have purchased said bonds, did you consider said bonds of any, and, if so, of what, cash value; and were you ready or willing to pay anything, and, if so, howmuch, in cash down, for said bonds and coupons, and how and from what sources did you and do you form your conclusions as to their cash value?

8. Did you know and was you in any wise informed of the several suits which had been instituted on some of the coupons of these bonds, and of the several results and outcome of said several suits; and
29 how, when, and by what means were you so informed? And state, if you know, why none of said several suits was ever brought to trial on its merits?

9. Whether the defendants George B. Goodwin, Henry Hewitt, and Theodore Conkey, or some [or which] of them, did not, several years ago, institute and prosecute a suit in this court on some of the coupons belonging to said bonds, in the name of one Henry Decker, j'r, who was a mere nominal plaintiff; and whether said Decker had any, and what, interest in the coupons sued on in that suit; and whether the said Goodwin, Hewitt, and Conkey were not, or some of them, interested in said action; and whether the said Goodwin did not act for and on behalf or as the agent or attorney of the said Hewitt in and about the institution, prosecution, management, and final disposition of said last-named action; and whether each and all of the defendants in this bill did not, before the commencement of the action of Geo. W. Winegar on said bonds, know the full and complete history, character, and quality of said bonds and coupons, and that they were worthless and valueless, and could not be sold for anything in cash. And why was not that suit of Henry Decker, j'r, against the town of Grand Chute brought to a trial on its merits?

10. Whether the notice to the "electors of the town of Grand
30 Chute," signed by Reeder Smith, president of the Wolf River Branch Plank-road Company, was not issued and circulated as specified and set forth in this bill, and for the purposes as herein set forth; whether the defendant Theodore Conkey was chairman of the board of supervisors of the town of Grand Chute, and also a member of the committee mentioned and referred to in said notice, and whether Reeder Smith, president of said plank-road company, was not a member of the same committee; whether the said Conkey, Hewitt, and Reeder Smith, on or about the 15th of January, 1855, did not enter into an agreement that the said Hewitt should receive a contract for the building of said road at a price greatly above what it would cost to build the same, and that he should take said bonds in payment, and that the location of the road should be changed to a route which would greatly benefit the said Conkey's property, and which would be much more expensive; whether said Conkey was not a merchant and provision dealer in the town of Grand Chute, and whether it was not agreed that he should furnish the supplies for the road, and receive bonds therefor; and whether it was not agreed that Reeder Smith should have one thousand dollars of said bonds, and that said Smith

and Conkey should accomplish the change in the location of the
31 road, and the letting of the contract, and the delivery of the bonds to said Hewitt by means of their official position, influence, and votes as members of said committee; and whether said Conkey and Smith caused said committee to abondon a desirable line of level road two miles in length, which had been graded and partly planked at a great expense, and to adopt a circuitous route on which nothing had been done, and which required an expensive bridge and heavy grading; whether the said Conkey and Smith, afterwards, to wit, on or about the 8th day of February, 1855, did not procure said committee to appoint them, said Conkey and Smith, a special committee to let the contract for building said road; and whether they did not afterwards execute and interchang'ably deliver with said Hewitt duplicate originals of a contract of the tenor, effect, and substance of that set forth in this bill of complaint, bearing date the 10th day of February, 1855.

11. Whether the prices specified in said contract were not unreasonable and extravagant; whether Reeder Smith did not receive one thousand dollars for his own use of said bonds, and said Hewitt nine thousand dollars of said bonds; and whether said bonds so received are not the same bonds sued on by the defendant Geo. W. Winegar, or in part the same; and whether said Hewitt did not pass three thousand dollars
32 of said bonds over to Conkey; whether said Hewitt complied with the terms of said contract, or neglected to build five miles of said road, and neglected to complete any part of said road in a workmanlike manner; and whether he made a double grade twenty feet wide, or sufficient ditches to carry off the water, or cut out the timber thirty-three feet wide, or whether he ever fully complied with his agreement; and whether the work done was not worthless and valueless to to the town of Grand Chute and to the plank-road company.

12. Whether, after said plank-road company had ceased to build any road, and had become absolutely and hopelessly insolvent, to wit, on or about July 30, 1857, one S. G. Callahan, at the request of Reeder Smith, Conkey, & Hewitt, made an estimate of the work done by said Hewitt, and an acceptance of the job, without any notice to the town of Grand Chute; and whether the stock in said plank-road company did not become entirely worthless; and whether it has not ever since been valueless and worthless; and whether said town of Grand Chute ever received any benefit from said stock, or from said plank-road, or from said contract.

13. Whether you or either of you ever owned, possessed, or had any or either of the bonds or coupons sued on by George W. Winegar, or any or either of the Grand Chute bonds or coupons, at
33 any time; and if so, how many and what amount of said bonds and coupons did you own, possess, or have; how did you come by them, of whom did you receive them, what consideration in cash did you pay for them, of whom did you purchase, and did you pay cash down or give your notes, or some other stocks, securities, or barter; and, if you gave your note, did you ever pay such note; and did you ever consider such bonds and coupons of any, and if so, how much value in cash; and has there ever been any time when said bonds could have been sold in the market at auction, or otherwise, for ten cents on the dollar, of their face; and did you ever know said bonds and coupons to be sold for anything; and if so, for how much in cash; and when and where, and to whom did James H. Howe, of Kenosha, Wis., & T. R. Mudd, of Green Bay, Wisconsin, or either and each of them, ever, and where, and how long, own or hold one or more of the bonds and cou-

pons sued as aforesaid in the name of said Winegar, or did they own or hold any other Grand Chute town bonds, of which the bonds so sued are part and parcel; or did they or either of them claim any and what interest thereon, or lien thereon, for legal services, (or otherwise,) in the prosecution of suits brought against said town in the State courts of Wisconsin, on the coupons of the bonds now sued in the name of said Winegar; and do they or either of them, still hold such bonds and coupons, and have they any and what interest therein, or in the event of said Winegar's suit; or have they or either of them ever been paid; and if so, when, by whom, what amount, and in what manner for the relinquishment of such claims? Was the action of Henry Hewitt against The Town of Grand Chute, lately pending in the circuit court of the State of Wisconsin, for the county of Outagamie, concerning the same bonds, since sued in said Winegar's name in this court, discontinued, at or about the time of the commencement of the suit of said Winegar; and were the costs of said discontinued action paid, and who furnished the money for such payment, and through the agency of what person or persons, and when and to whom was such payment made, and what was the amount thereof?

14. Did you see George W. Winegar, in person, at the time he consented to stand as plaintiff in the suit brought on the bonds and coupons; and if so, when and where did you see him; was it at Union Springs, and in the bank of which he was teller; who first mentioned the subject of the bonds when you saw him; what language was used in making the arrangement with him to have the suit brought in his name; how long did it take to make and complete the arrangment, and did you not go to Union Springs for the purpose of making an agreement with some person for the express purpose of maturing a plan by which suit could be brought and prosecuted on the bonds and coupons in the United States court of Wisconsin; and had you then and there possession of said bonds and coupons and any interest, actual and unconditional, or contingent in said bonds and coupons; and of whom did you acquire such interest, and of and from whom did you receive said bonds and coupons? How long have you had them, where were they when the suit in favor of Henry Decker, jr, was commenced, and all the time during its pendency, and what interest had you in them at that time; where were said bonds and coupons when you were at Union Springs negotiating with George W. Winegar; were said bonds shown to him at that time, or delivered to him by you, and did you leave the notes given by him at the bank in Union Springs, or take them with you to Milwaukee; and where are said notes, and where have they been during the whole time since the execution of said notes; to whom or to whose order were said notes payable; who was the owner of said notes at the time of their execution, and who has since owned them? What interest, real, actual, or contingent, did Henry Hewitt and Theodore Conkey, or either of them, or any other person, have in said bonds and coupons at the time George W. Winegar is said to have purchased them; and what interest have you, or Hewitt, or Conkey, real, actual, contingent, or otherwise, in said bonds and coupons, or in the result of said suit brought on said bonds and coupons? How are you to be paid for your services in bringing and prosecuting the suit, and is the amount of your pay dependent on the amount of the recovery, or are you to have and receive something certain, irrespective of success; and if so, how much; and if you are to have an interest in the judgment contingent on a recovery, what proportion of such judgment are you to have? How did

it happen that you selected George W. Winegar as the person who would be likely to take said bonds, and sue on the same? Did you explain to him that there had been several suits on the coupons, and no recovery had on them? Did you give him a history of said bonds and coupons, and did you narrate or explain to him how the issuing of them was procured? Did you inform him that the town of Grand Chute had disowned, denounced, and repudiated them from the
37 start, and that they could not be sold for anything, at home or where they were known; and what did you say to or inform him about said bonds, and of the facts and circumstances connected with them before and at the time you claim to have negotiated the matter with him? State fully and particularly the whole conversation between you and said Winegar in regard to the matter. Did Mr. Backus participate in, or have anything to do with, the negotiation or sale to Winegar; and did he ever have, and has he any interest, real, actual, or contingent in said bonds and coupons, or in the result of the suit of Winegar; if so, state what that interest is? Did you ever try to sell said bonds to any other person except to Geo. W. Winegar; and if so, when, where, and to whom; and did you ever have any cash offer for the same; and if so, how much, and when, and where, and by whom was the offer made? And where do and did each of the defendants to this bill reside before and at the time the suit of Geo. W. Winegar on the bonds & coupons was brought? Was said C. T. Backus your brother-in-law, & had you at the time of said negotiations with said Winegar, or at any other & what time, intimate business relations with said Backus, & were you & he ever, & when & how long, officers
38 or agents of some, & what, corporation; & were you & said Backus, or either & which of you, largely interested as stockholders, or how otherwise in such corporation?

And that all proceedings in said action at law in this court, brought in the name of said George W. Winegar on said bonds and coupons, be stayed, and that the said George W. Winegar and all other persons interested with him be prohibited and forever enjoined from further prosecuting said action at law, and that the said defendants, and each and every of them, be enjoined from selling, transferring, or otherwise disposing of said bonds and coupons:

And that the said bonds and coupons described and specified in said action at law, be decreed and adjudged to be fraudulent and void, and that the same be brought into this court and filed in this case, and cancelled in due form:

And that your orator may have such other and further or different relief as the nature of this case may require, and as shall be agreeable to equity and good conscience:

May it please your honors to grant unto your orator a writ of injunction, to be issued out of and under the seal of this honorable court, to be directed to the said George W. Winegar, George B. Goodwin,
39 Henry Hewitt, and Theodore Conkey, strictly commanding them and each of them, under a certain penalty in manner and form aforesaid.

May it please your honors to grant unto your orator the most gracious writ of subpœna, to be issued out of and under the seal of this court, to be directed to the said George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Conkey, defendants, strictly commanding them and each of them, on a day certain and under a certain penalty therein to be named, to be and appear before your honors in said court to answer the premises and the matters and things aforesaid, and to stand to

and abide by such order or decree in the premises as shall be agreeable to equity; and your orator will ever pray, &c.

GEORGE W. LAKIN,
Solicitor for Complainant.

G. W. LAKIN,
Of Counsel.

George W. Winegar, Geo. B. Goodwin, Henry Hewitt, and Theodore Conkey, and each and every of them, are required to answer the above interrogatories, number 1, 8, 9, 10, 11, 12, 13; and George W. Winegar is also required to answer the above interrogatories numbered 2, 3, 4, 5, 6, 7.

40 And the said George B. Goodwin is also required to answer the interrogatory numbered 14.

GEO. W. LAKIN,
Solicitor for Complainant.

THE UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

R. H. Randall, being duly sworn, says that he is chairman of the board of supervisors of the town of Grand Chute, the complainant in the above and foregoing bill, and that he is authorized to act for and on behalf of said town; that he has read the said bill, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes the same to be true.

R. H. RANDALL.

Subscribed and sworn to this 30th day of July, 1870, before me.

WILLIAM S. WARNER,
United States Court Commissioner for the Eastern Dist. of Wisconsin.

Whereupon a subpœna issued, returnable the first Monday of September next, as follows:

41 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

[SEAL.] The President of the United States of America to George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Conkey, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the eastern district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of September next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by The Town of Grand Chute.

And to do further, and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Conkey, if to be found in his district, and due return thereof make.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme

Court of the United States, at the city of Milwaukee, in the said district, this fifth day of August, in the year of our Lord one thousand eight hundred and seventy, and of our independence the ninety-fifth.

EDWARD KURTZ, *Clerk.*

GEO. W. LAKIN, *Solicitor.*

It is ordered by our said court, that the said George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Conkey, the defendants aforesaid, do enter their appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed.

42 Ordered, by the district judge, that this subpœna be served on George W. Winegar by serving a copy thereof on Messrs. Palmer, Hooker, & Pitkin, or George B. Goodwin, his attorney in the suit at law.

Return.

Served on the within named George W. Winegar by leaving a copy of this subpœna with Mr. H. L. Palmer, of Palmer, Hooker & Pitkin, his attorneys, as above ordered, this 5th day of August, 1870; & served on Theodore Conkey by delivering to him personally a copy of this writ this 9th day of August, 1870; & served on the within named George B. Goodwin by delivering to him personally a copy of this writ this 10th day of August, 1870. Fees $16 60.

C. S. HAMILTON, *Marshal,*
By C. H. HAMILTON, *Deputy.*

Served on the within named Henry Hewitt by delivering to him personally a copy of this writ this 9th day of August, 1870. Fees $2 42.

C. S. HAMILTON, *Marshal,*
By E. C. FOSTER, *Deputy.*

43 SEPTEMBER 5, 1870.

This day came the defendants, by their solicitors, Messrs. Palmer, Hooker & Pitkin, and Geo. B. Goodwin, and filed their appearance & demurrer, which are as follows:

Appearance.

U. S. circuit court, eastern district of Wisconsin.

THE TOWN OF GRAND CHUTE
vs.
GEORGE W. WINEGAR, GEORGE B. GOODWIN, Henry Hewitt, and Theodore Conkey.

SIR: Please enter our appearance as solicitors for the defendants in the above-entitled suit.

Milwaukee, Sept. 3, 1870.

PALMER, HOOKER & PITKIN and
GEORGE B. GOODWIN,
Solicitors for Defendant.

To EDW'D KURTZ, *Clerk.*

Demurrer.

U. S. circuit court, eastern district of Wisconsin.

THE TOWN OF GRAND CHUTE
vs.
GEORGE W. WINEGAR, GEORGE B. GOODWIN, Henry Hewitt, and Theodore Conkey. } In equity.

The demurrer of George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Conkey, defendants, to the bill of complaint of The Town of Grand Chute, complainant.

44 These defendants respectively, by protestation, not confessing or acknowledging all or any of the matter and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth & alleged, do demur thereto, and for cause of demurrer show that it appears from the said bill of complaint that the complainant therein is a municipal corporation, created by the laws of, and existing in, the State of Wisconsin, and is a citizen of the State of Wisconsin, and also that the said defendants, George B. Goodwin, Henry Hewitt, and Theodore Conkey are residents and citizens of the said State of Wisconsin; and it further appears by the said bill of complaint that the said suit is not a suit between a citizen of the State where said suit is brought, to wit, the State of Wisconsin, and citizens of another or other States, and this court hath not jurisdiction to hear, try, and determine the matters set forth in the said bill of complaint between the parties thereto. Wherefore these defendants demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and pray to be hence dismissed, with their reasonable costs in this behalf sustained.

PALMER, HOOKER & PITKIN,
GEORGE B. GOODWIN,
Solicitors for Defendants.

45 I certify that, in my opinion, the foregoing demurrer is well founded in point of law.

H. L. PALMER,
Of Counsel for Def'ts.

EASTERN DISTRICT OF WISCONSIN,
County of Milwaukee, ss:

George B. Goodwin, one of the defendants in the above-entitled suit, being duly sworn, says that the above and foregoing demurrer is not interposed for delay, and that he makes this affidavit on behalf of all said defendants, and that he has charge of, and is acquainted with, the defence of the said defendants.

GEORGE B. GOODWIN.

Subscribed & sworn to before me this 5th day of September, A. D. 1870.

HORACE L. PALMER,
Notary Public Mil. Co., Wis.

And same day, (September 5, 1870,) the plaintiff's solicitor entered in the order & rule book the following rule:

THE TOWN OF GRAND CHUTE *vs.* GEORGE W. WINEGAR, GEORGE B. GOODWIN, Henry Hewitt, & Theodore Conkey.	1st Monday Sept., 1870. In equity.

On motion of Geo. W. Lakin, solicitor for complainant, it is ordered that the demurrer of the defendants to the bill of complaint herein
46 be set down for argument at the next term of the court, to commence on the 1st Monday of October next.

GEO. W. LAKIN,
Sol'r for Complainant.

And now, at this same term, to wit, October term, A. D. 1870, and on the thirty fifth day thereof, to wit, on the sixteenth day of November, A. D. 1870, the following proceedings were had, to wit:

Decree.

THE TOWN OF GRAND CHUTE *vs.* GEORGE W. WINEGAR, GEORGE B. GOODWIN, Henry Hewitt, & Theodore Conkey.	In equity.

This day came the parties, by their counsel; and, the demurrer to this bill having been previously argued and submitted, on consideration thereof, it is ordered, adjudged, and decreed by the court that the said demurrer be, and hereby is, sustained. And it is further ordered, adjudged, and decreed that the complainant's bill of complaint be, and hereby is, dismissed, and that the complainant pay the costs, to be taxed within ten days, or in default thereof that an execution be issued against it for the same.

A. G. MILLER.

47 And same day, (November 16, 1870,) came the complainant's counsel and prayed an appeal to the Supreme Court of the United States. Whereupon, it is ordered by the court that said appeal be, and hereby is, allowed, and that said complainant give bond, with sureties to be approved, in the penalty of five hundred dollars conditioned, to prosecute said appeal to effect, and answer all costs if it shall fail to make good its plea.

DECEMBER 20, 1870.

Appeal bond filed. Approved by the district judge, with Amable Brouillard & Nicholas Wieland, sureties; and a citation issued. Said appeal bond is as follows:

Appeal bond.

Supreme Court of the United States.

THE TOWN OF GRAND CHUTE *vs.* GEORGE W. WINEGAR, GEORGE B. GOODWIN, Henry Hewitt, & Theodore Conkey.	In chancery.

Know all men by these presents that we, The Town of Grand Chute,

as principal, and Amable Brouillard and Nicholas Weiland, of Outagamie County, Wisconsin, as sureties, are held and firmly bound unto the above-named George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Conkey, in the sum of five hundred dollars, to be paid to the said George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Conkey, their executors or administrators; to which
48 payment, well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 17th day of November, in the year of our Lord one thousand eight hundred and seventy.

Whereas, the above-named town of Grand Chute hath taken an appeal from the order, decree, and judgment of the United States circuit court for the eastern district of Wisconsin, made and rendered in the above action, to the Supreme Court of the United States, to reverse said order, decree, and judgment: Now, therefore, the condition of this obligation is such, that if the above-named Town of Grand Chute shall prosecute its said appeal to effect, and answer all damages and costs if it shall fail to make good its plea, and to reverse said decree and judgment, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

TOWN OF GRAND CHUTE, [SEAL.]
By R. H. RANDALL,
Chairman Board of Supervisors.
A. BROUILLARD. [SEAL.]
NICHOLAS WEILAND. [SEAL.]

Signed, sealed, and delivered in presence of—
VIOLA RANDALL.

EASTERN DISTRICT OF WISCONSIN,
Outagamie County, ss:

Amable Brouillard, & Nicholas Weiland, of said county, being
49 duly and severally sworn, each for himself, says, that he is worth the sum of one thousand dollars over and above his debts, and exclusive of property exempt from execution.

A. BROUILLARD.
N. WEILAND.

Subscribed and sworn to this 25th day of November, A. D. 1870, before me.
[SEAL.]
GEO. C. JONES,
Notary Public, Wis.

Nov. 30th, 1870. Approved.
A. G. MILLER, *Dis. Judge.*

50 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full & complete copy of the record & proceedings in the suit of The Town of Grand Chute et al. vs. George W. Winegar et al., in equity.

In testimony whereof I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukee, in said eastern district of Wisconsin, this twenty-fifth day of January, in the year of our Lord, one thousand eight hundred and seventy-one, and of the independence of the said United States the ninety-fifth.

[SEAL.] EDWARD KURTZ, *Clerk.*

51 [SEAL.] The United States of America to George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Conkey, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to an appeal in the circuit court of the United States for the eastern district of Wisconsin, wherein The Town of Grand Chute is appellant, and you are appellees, to show cause, if any there be, why the decree passed against the said Town of Grand Chute should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twentieth day of December, in the year of our Lord, one thousand eight hundred and seventy, and of the independence of the United States the 95th.

A. G. MILLER,
District Judge.

We accept service of above citation this 24 day of December, A. D. 1870.

PALMER, HOOKER & PITKIN,
Respondents' Solicitors.

(Indorsement on cover:) No. 507. The Town of Grand Chute, appellant, vs. George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Conkey. E. Wisconsin C. C. U. S. Filed 15th February, 1871.

Supreme Court of the United States.

THE TOWN OF GRAND CHUTE, APPELLANT,

vs.

GEORGE W WINEGAR, GEORGE B. GOODWIN, HENRY HEWITT AND THEODORE CONKEY, APPELLEES,

In Chancery.

Brief, Points and Argument for Appellant.

GEORGE W. LAKIN,

Attorney for Appellant.

Supreme Court of the United States.

THE TOWN OF GRAND CHUTE, APPELLANT,

vs.

GEORGE W WINEGAR, GEORGE B. GOODWIN, HENRY 2
HEWITT AND THEODORE CONKEY, APPELLEES,

In Chancery.

Brief, Points and Argument for Appellant.

GEORGE W. LAKIN,

Attorney for Appellant.

3

The Bill alleges the complainant to be a municipal corporation, and citizen of Wisconsin: and the defendant Winegar to be a citizen of New York, and the other defendants to be citizens of Wisconsin.

And that on the 26th of April 1870, Winegar commenced an action of debt in the U. S. Circuit Court, District of Wisconsin, against the complainant to recover ten thousand dollars and upwards, alleged by said Winegar to be due him from complainant, on nine several bonds of $1000 each, except one was for $500, all dated March 12th 1855, with interest annually at 10 per cent per annum, with coupons thereto— said bonds maturing 15 years from date thereof.

That defendants, Goodwin, Hewitt, and Conkey, for a small and 4
nominal consideration, or without any consideration, became possessed of said bonds and coupons, and that Goodwin afterwards went from Wisconsin, to Union Springs, New York, and to the bank of C. T. Backus, the brother-in-law of Goodwin, and there found the defendant Winegar, a teller in said bank. That Goodwin then and there made and attempted to make a colorable and sham sale of said bonds and coupons to Winegar, for the purpose of enabling

said Goodwin, Hewitt and Conkey, to bring and prosecute an action thereon in the U. S. Circuit Court of the District of Wisconsin, and for the purpose of preventing the complainant, the town of Grand Chute, from interposing, and
5 urging its just, legal, and equitable defence to a recovery of judgment on said bonds, against said complainant. That Goodwin, for himself and for and in behalf of the other defendants, requested Winegar to allow his name to be used as plaintiff—that Winegar assented—that no real sale or transfer of the bonds or coupons was ever made to Winegar—that Winegar had just been through bankruptcy—was working as teller at a salary of $800, per year, without any other income—that he had no money or other effects with which to buy bonds.

That to give said sham and fraudulent sale an outside show of fairness and good faith, Goodwin and Winegar agreed that the latter should execute to the former or to the other defendants, two promissory notes, in all for $5100, on long time, in equal payments in one and
6 two years, as the only consideration for said pretended sale and purchase. That Winegar was irresponsible, financially, and gave no security, and that none was required. That said bonds were not then, or at any time, produced, shown or delivered to Winegar—that he has never had any of them in possession or under his control; but that said bonds and coupons have at all times been in possession and under control of Goodwin and the other defendants.

That Winegar, without having any interest in said bonds consented to the plan of standing as plaintiff in the action, but gave the matter no attention—and after the action had been pending several weeks, was ignorant as to whether or not the notes which he had signed were negotiable—or whether they had ever been delivered—or to whom they were payable.

That several years ago, Gooodwin, Hewitt and Conkey, commenced
7 a suit, in the U. S. Circuit Court, District of Wisconsin, in the name of one Henry Decker, a nominal plaintiff, on some of the same coupons: that such suit was commenced October 21st 1861—that the proper defences were interposed, which were the same, *mutatis mutandis*, as in the action at law in this case; that such action remained in court until June 21st 1866, when is was discontinued. That Decker's name in that suit was used for the purpose of obtaining jurisdiction, merely, as Winegar's name has been used in the action in this suit.

That Winegar and all of the defendants in this suit well knew of the existence pendency, full nature, extent and character of said action in which said Decker was plaintiff, and of the character of the sup-
8 posed causes of action set forth therein. That about the 19th of September 1857, Hewitt commenced an action in the Circuit Court of Outagamie Co., against complainant, on some of the same coupons—that the matter was litigated, and an appeal taken to the Supreme Court of Wisconsin, and the plaintiff failed to recover—that no judgment has ever been recovered against complainant on any of said bonds or coupons.

That about the 12th of March 1855, complainant caused notice to be given in the N. Y. city stock market and in the other stock markets

of the United States, of the illegal and fraudulent issue of said bonds, and that they would not be paid. That such notice was published in the N. Y. *Tribune*, and the other papers having a general circulation, and in the Milwaukee *Sentinel* and Green Bay *Advocate*, and other papers having a general circulation in Wisconsin.

That the bonds in the action in which Winegar is the nominal plaintiff, purport to have been issued under an act of the Legislature of Wisconsin entitled "an act to authorize the towns therein named "to subscribe for Plank Road Stock," approved February 10th 1854, —that by said act, the several towns therein named are in terms, and under certain restrictions authorized to subscribe to the capital stock of "the Wolf River Branch of the Winebago Lake and Fox River Plank "Road company," "such amount not exceeding $10000, as may be "declared by the board of directors of said company, necessary for the "completion of said road at the time of said subscription," and to pay for the same in bonds of said towns. That said Plank Road company or the directors thereof, never did, nor did the directors of the Wolf River Branch Company ever declared what sum, or that any sum was necessary for the completion of said road—that said bonds were not issued in accordance with said act, and are void. 9 10

That the town of Grand Chute never did, in any way or manner or at any time subscribe any amount to the capital stock of the Wolf River Branch of "the Winebago Lake and Fox River Plank "Road Campany." Specified in said act—that no authority whatever, by resolution or otherwise was ever given or granted to any officer of said town to issue any bonds in payment of any supposed subscription of said town to said Plank Road company or for any purpose. That Conkey as chairman of the board of supervisors of said town had no authority to sign said bonds, or to affix the corporate seal thereto—that all of said acts of said Conkey are fraudulent, and said pretended bonds are void. That each of said bonds recites that the act of February the 10th 1854, authorized the issuing of the bonds to the *Wolf River Branch Plank Road Company*—that said bonds recite what is false, as no authority whatever is given in and by said act authorizing the town to subscribe to the stock of the Wolf River Branch Plank Road Company, or to issue any bonds to said company. 11

That each of said bonds on its face purports to be issued to the "Wolf River Branch Plank Road Company," a company not known mentioned or referred to in or by said act of the Legislature, under and by virtue of which said pretended bonds are claimed to have been issued—that said bonds are fraudulent and void upon their face, that the bonds were not executed, delivered, or negotiated by the town, or recognized, or in any manner affirmed.

That Conkey was chairman of the board of supervisors, of Grand Chute, before and at the time the bonds were issued. That Conkey and Hewitt combined and conspired with Reeder Smith the president of the Wolf River Branch Plank Road Company, to procure the fraudulent issue of the bonds for their own private speculation. That on the 17th of May 1854 they published and circulated among the people and voters of the town a notice and proposition (Rec. fol 12) to fraudulently influence the voters. That on the 20th of May 1857, 12

a false, fraudulent, pretended and sham election was held in said town. That those who voted in favor of the issue of said bonds, were induced to do so, by said proposition. That under color of said election, and in fulfillment of said proposition, a committee of seven was organized. That Conkey was chairman of the board of supervisors of said town, and a member of said committee. That Reeder
13 Smith was a director, and president of said Wolf River Branch Plank Road Company, and, as such, was a member of said esmmittee (Rec. fol. 13.)

That on or about the 15th day of January 1855, in pursuance of said fraudulent purpose, a corrupt and fraudulent agreement was entered into between said Smith, Conkey and Hewitt, that Hewitt should receive a contract for building the road, at an extravagant price, that is, a price greatly above what it would cost to build the same, and should take said bonds in payment (Rec. fol. 14.) (see contract in printed record fol. 16, 17, 18.)

That the prices specified in said contract, were unreasonable and extravagant, and purposely made so by Conkey, Smith & Hewitt, to defraud the Town. And that for the same purpose the Company was
14 released from liability on the contract, by the terms thereof. That for the same purpose it was therein provided that the work should be done to the acceptance of the company's engineer; and that the whole $9000. in bonds should be paid in advance. That in pursuance of said corrupt and fraudulent agreement, Conkey, without any legal or proper authority, subscribed, on behalf of said Town of Grand Chute, for $10,000. of capital stock of said company, and to issue bonds to that amount; and without authority subscribed the name of said Town, to a promise to take $10,000. of stock in said Company, and agreed to pay for the same all at once in bonds of the Town, instead of paying in installments according to the usual terms of such subscriptions. That Smith received bonds of the town to
15 the amount of $1000. for his own use; and Hewitt $9000. the same on which suit is brought; that Hewitt passed over to Conkey $3,000. of said bonds. That Hewitt neglected to comply with the terms of the corrupt agreement; (the particulars whereof are set forth in the bill, see Rec. fol., 19, 20, and 21.)

That, after the time of completing said contract had expired, by the terms thereof, and after the company had ceased to build any road, and had become hopelessly insolvent; to-wit, July 30, 1857. S. G. Callahan, who had been appointed engineer of said company, at request of Smith, Conkey & Hewitt, (said Smith then still being the president of said company.) made a pretended estimate of said work done by Hewitt; and made a pretended acceptance of said job without any notice to, or knowledge of said Town. That said estimate and acceptance were false, and a fraud against the Town and against the County. That by reason of said frauds the stock of the
16 company became and is worthless, and the town received no benefit from the stock or from the contract, or from the pretended bonds and coupons. That the bonds and coupons are entirely without consideration—were never authorized to be issued and the town never recognized or affirmed their validity, but have taken every precaution to protect and guard the public against them.

That the town has been obliged to defend against repeated suits, and believes that it will be harrassed by a multiplicity of suits, unless ssid bonds and coupons be adjudged void.

That before, and at the time of the issuing of said bonds, Goodwin resided in Menasha, adjoining Grand Chute and knew of the whole business, and of the fraudulent nature and character of the 17
bonds, and that Winegar knew and was informed of the same. That said bonds never had any market value, and never passed from hand to hand, and were never in the market, in any commercial sense; that Winegar paid nothing for them, and never intended to, and never had any right or title thereto.

The bill prays for a full discovery from each of the defendants, under oath, for an injunction against the action at law, that the defendants be enjoined from disposing of said bonds and coupons, that they be adjudged fraudulent and void, and that the same be brought into court, filed and cancelled, also for general relief, for the usual procep, &c.

All of the defendants filed a demurrer to the whole bill, (Rec. fol. 44,) which was sustained by the court, and the bill dismissed. And 18
thereupon the complainant appealed.

Demurrer.

U. S. CIRCUIT COURT—EASTERN DISTRICT OF WISCONSIN.

THE TOWN OF GRAND CHUTE
vs.
GEORGE W. WINEGAR, GEORGE B. GOODWIN, Theodore Conkey, and Henry Hewitt. } In equity.

The demurrer of George W. Winegar, George B. Goodwin, Henry Hewitt, and Theodore Codkey, defendants to the bill of complaint of The Town of Grand Chute, complainant.

These defendants respectively by protestation, not confessing or acknowledging all or any of the matters or things in the said complainant's bill to be true, in such manner and form as the same are there- 19
in set forth and alleged, do demurr thereto, and for causes of demurrer show that it appears from the said bill of complaint, that the complainant therein is a municipal corporation, created by the laws of, and existing in the State of Wisconsin, and is a citizen of the State of Wisconsin, and also that the said defendants, George B. Goodwin, Henry Hewitt, and Theodore Conkey, are residents and citizens of the state of Wisconsin, and it further appears by the said bill of complaint that the said suit is not a suit between a citizen of the state where said suit is brought, to-wit: the state of Wisconsin and citizens of another or other states, and this court hath not jurisdiction to hear and try and determine the matters set forth in the said bill of complaint between the parties thereto. Therefore, these defendants demand the judgment of this Honorable Court, whether 20
they shall be compelled to make any further or other answer to the said bill or any of the matters or things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

PALMER, HOOKER & PITKIN,
GEORGE B. GOODWIN,
Solicitors for Defendants.

The court erred in sustaining the demurrer, and in dismissing the bill.

Argument.

I. In the action at law, the object, and aim of the plaintiff, are to
21 obtain the judgment of the court as to the validity of the bonds.

Jurisdiction is asserted by the plaintiff, and he is estopped from denying it.

The object, end, and aim of the town of Grand Chute, the complainant in this equity suit, are in some respects about the same, to-wit, to obtain the judgment of the court, in regard to the validity of the bonds.

The subject matter of the actions are identical. The parties, when made known, are identical.

Winegar with these fraudulent bonds upon him, has elected his forum, into which he has forced the town of Grand Chute to face him in the contest. In obedience to the mandate of the court, the town comes forth, and, with its bill in equity, exposes the fraud and the
22 rottenness of the whole of the scheme, from its inception and brings it home to the knowledge of Winegar.

Now, it is enough for us that we have this masked man of straw who is in court with profert of the bonds, which we seek to have cancelled, by the judgment and decree of this court. If these other defendants—this *triumvirate* who have set him up and who are standing in his shoes, looking through his eyes to a judgment of $20,000., are afraid of the haggard, bankrupt specter of their bidding, then let them disclaim and leave him alone, to fight the town.

Geo. W. Winegar says to the U. S. court: "You have juris-
" diction of me and of my bonds; and also of the town of Grand
" Chute."

The town says. "Aye, and we are ready to proceed."

Winegar, files his declaration in debt. The town files its bill in
23 equity for relief against the false and fraudulent paper sued on.

Goodwin, Hewitt, and Conkey appropriate the New York citizenship of Winegar; and, through that citizenship, come into court. Though citizens *de facto* of Wisconsin, by a fraudulent fiction, they clothe, and invest themselves with the New York citizenship of *Winegar*, and, in so far as they are competent to act through Winegar's citizenship against the town of Grand Chute, the town of Grand Chute is competent to *re-act*, by way of defence, or in a cross-action against these fraudulent and collusive parties, and against the fraudulent thing, in controversy. If this is not sound logic and law, then all that need be done by subtle and scheming parties, to bar and quiet all inquiry into frauds of the nature set up in the bill, is, to select
24 their kindred spirit, of New York citizenship, and to enter the Federal Court through him, and the work is finished; and from thenceforth, defendants (*provided they are not railroad corporations*) against whom fraudulent bonds and coupons are presented, when they enter that forum—may abandon their defences.

In the equity case, as between the town and Winegar, there can be no controversy about jurisdiction. Both *parties* insist that the court *has* jurisdiction, and ask its judgment upon the matters involved. Should Goodwin, Hewitt, and Conkey be eliminated, as parties de-

fendants, the action would remain against their exponent, the man who has the bonds, and who invokes the jurisdiction of the court in his behalf, so that, if, upon the technical point of citizenship, these three defendants should be dropped out of the bill, still, our action must stand agaidst Winegar, who is the sole, ostensible plaintiff in the action at law. 25

(Carneal vs. Banks, 10 Wheat. 181.)

Ours is not an original suit. We seek relief against proceedings in the same court, between the same parties, about the same thing which is the subject of the action, and we properly invoke the aid of the chancery side of the court.

(Bates vs. Delevan, 5 Paige. C. R. 299.)
(Dun'op vs. Stetson, 4. Mason, 349.)
(Rogers vs. Rogers, 1. Paige, 183.)

But Goodwin, Hewitt and Conkey are proper co-defendants. If our bill is true—and, for the purpose of this demurrer, at least, it is true—then these defendants are actually in court, masked, and under cover of the name of George W. Winegar; and by, and under 26 that name, are seeking to obtain final judgment against the town of Grand Chute, for some $20,000.

They have hold of us with the grip of a money-god, and proffer to dissect us with axe and cleaver, and, when we venture to look them in the eye, to arrest the blow, they coolly order us and pray the court to modestly order us *not to hurt them*—but to measure weapons with the windmill party, whom they have set up expressly for that purpose!

They, Goodwin, Hewitt, and Conkey, if our bill is true (and the demurrer admits its truth) are in court under the name of Geo. W. Winegar. By and under that name they have summoned the town to answer. Finding them so in court, with the town duly summoned, the town accepts the gage of battle, and draws out its bill in chancery 27 against the identical party plaintiffs who, have commenced their action against the town of Grand Chute.

This suing by speculation—by *trade name*—this making a sham plaintiff, are part and parcel of the scheme and web of fraud; and it is so set out in the bill. It is a part of the fraudulent chain which has been forged to enslave the town, the three fraternal links of which chain, we are told must not be touched. For they are sacred to the order of brotherhood, whose mission is *to get money*—no matter how!

The defendants confess the whole thing. They confess that the seed was planted, that the plant was grown—the thread spun—and the web woven as set forth in the bill, that they were the inventors and projectors of the fabric of fraud, that they are now seeking, by 28 their action at law, under the name of Geo. W. Winegar, to obtain a judgment, in order to execute that scheme of fraud which has been so carefully and deeply planned, and yet, by their demurrer, they ask the court to decide, that we have no right to make *them* defendants to the bill—that they have a right to stand behind Geo. W. Winegar, and fight us; but that we have no right to resist or to fight them.

As a matter of expedience and technical safety to themselves, they prefer that our weapons should be drawn against the shadow of themselves, at Union Springs.

The martial court of Trojan memory, took jurisdiction of the Grecian horse—and with the animal the armed soldiers in his bowels—though the soldiers were not bargained for, and though the captors afterwards would gladly have dispensed with the emboweled trophies.

29

This negative-pregnant colossal plaintiff, Geo. W. Winegar, gives the court jurisdiction of himself and his bonds. He has no right to complain that the eye of chancery has discovered the full grown triplet defendants, who struggle for concealment within his elastic frame, nor, that the court, in taking of him the jurisdiction which he has tendered, takes also jurisdiction, of all that is *in him*, as a constituent, integral part of himself. For, in respect to the action, he and they are one and inseparable. Such they have made and constituted themselves.

In the chancery suit we make no more persons defendants, than are made plaintiffs in the action at law. The plaintiffs in the one suit are the defendants in the other; and *vice versa*. The chancery suit is but the true photograph of the action at law. We suspend their case before the mirror, and obtain a reflection and true picture of its nether faces; and its counterpart protests against the identity.

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Jurisdiction exists irrespective of citizenship. Reilly vs. Golding 10, Wallace, 56, reaches and illustrates the principle.

This is a case in which the jurisdiction of the court does not depend on the citizenship of the parties. Jones vs. Andrews, 10 Wallace, 327, is in point. The authorities cited in support of the last named case are, Logan vs. Patrick, 5 Cranch, 288. Simmons vs Guthrie, 9 Cranch, 25. Clarke vs. Matheson, 12 Peters, 164. Dunlop vs. Stetson, 4 Mason 349.

31

In Jones vs. Andrews 10 Wallace 327, the court says: "The "suit is, in its nature, not an *original*, but a *defensive*, or supplemen- "tary suit, like a cross-bill, or a bill filed to enjoin a judgment of "the same court, &c., * * * of which the court has jurisdic- "tion *irrespective of the residence of the parties.*"

In Dunlop vs. Stetson, Justice Story, says: "I believe the gene- "ral, if not universal, practice has been to consider bills of injunc- "tion upon judgments in the circuit courts of the United States, "*not as original*, but as auxiliary and and dependent suits, and "properly sustainable in that court which gave the original judg- "ment, and has it completely under its control."

As to the invalidity of the bonds, see Marsh vs. Fulton county 10 Wallace, 676. The theory in sustaining the demurrer, seems to be, that the collusion and fraud of Goodwin, Hewitt, and Conkey with Winegar, notwithstanding it was a part and parcel of the plot, and conspiracy to defraud and fleece the town of Grand Chute, could not be inquired into—because, here comes the potent reason, said Goodwin, Hewitt, and Conkey, are citizens of Wisconsin! They come into court behind Winegar, to perfect and execute their fraudulent plan—they resolve themselves into a masked battery, and they

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hurl their shot and shells at the town of Grand Chute ; but when the town gathers up the very missiles, which have been hurled by the enemy at it, and attempts to riddle the mask and battery of the assailants, the oracle of the law cries out, "hands off!" fights of this sort, in *this court*, must be *one-sided—defendants*, must be non-combatants, *non-litigants*, non-residents. 33

Such is the logic—such the law—that have gravely obtained, been meted out, and administered to the town of Grand Chute, A. D. 1870.

The entire case, the monstrosity, with heads, horns and divers deformities, patent und latent, is in court. If it marches out, it must go bodily, head, heels, bowels and their contents. So that, if the demurrer ousts the court of jurisdiction, it reaches to the very root and to every branch of the case, and, whichever way the chancery end of it, which covers the whole ground, goes, the *law end* must go with it, for they are one and inseparable. The theory of the defendants in the bill, seems to be that there *are* frauds that are too sublime, subtle, and sacred for analysis, or attack—that a fraud that ripens and culminates in pirating the jurisdiction of the national courts, is of that sacred character, that a fraud of that sort 34 which is raised to that sublime degree, is, *eo instanti*, a *bona fide* act, and that every mouth is closed against alleging the contrary. In a word, that before such a fraud *can* be attacked, whether it be a link in a complicated chain, or plot, or otherwise, the attacking party is bound, as a condition precedent to the assault, to concede the *fraud* to be an *honest* transaction!

It is for this court of last resort to record its judgment—whether or not, in this case where all of the elements of a defence which can well be imagined, exist and *stand admitted*, it will sanction and confirm the fraud collusion, and corruption which entered into and became part and parcel of such bonds and coupons, at their inception, and, of which fraud and corruption these very defendants in this 35 *Bill*, and plaintiffs in the action, at law, were the distinguished managers, and promoters.

The bill shows that it is not a case of negotiable paper, falling into the hands of an innocent, *bone fide* purchaser. On the contrary, it shows, the bonds in the hands of the conceivers, planners, and executors, of the dark plot which preceded and accompanied their production. The same hands have guarded them with care and diligence down to the present time. Though, as they repeated their efforts to make their paper available, they were, of course, obliged to add other fraudulent acts to the original stock in trade.

II.

The bill states a case which clearly entitles the town of Grand Chute to relief against the bonds. 36

On this there is, vouchsafed to us the conclusion, to wit, the demurrer sustained to the *whole* bill. The process of arriving at it, is a secret. That conclusion was first noted in the heat of the trial and contest in the action at law, right at the turning point. (See the record in the action at law fol. 132.)What were the logic and reason-

ing is left to conjecture. Facts and arguments seemed suspected with as much timidity, as was, anciently, the teeming wooden horse, and were repelled with the alarm of,

"*Timeo Danaos et dona ferentes!*"

2

37 We want to test the soundness of the bill, thoroughly—to apply every test known to equity jurisprudence. There is fraud of the basest character, all the way through. Neither the town, nor the voters of the town were participators therein. They were the dupes and the innocent victims, of such men as Conkey and Hewitt, who set their snares and sprung them upon their game, at pleasure. There is a desperate effort to carry out that fraud, upon the town and the honest people. There is material for hundreds of different suits, on the bonds and coupons, which might fall into the hands of so many parties, to their injury, and to the great vexation and irreparable damage of the town. Here, and no where else, while these bonds are in court, in the hands of these defendants, is the

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38 adequate and the only adequate remedy and relief. And here we invoke the aid of this court of equity which was created for this sort of case. To know critically, and exactly what the bill is, it should be read through. No mere abridgment or brief statement, such as stands at the head of this argument, can do it justice.

To test it in another way, we inquire what does it lack? what element, or ingredient is wanting to save it against the fate to which it was consigned by the court below—an absolute dismissal. Had the court condescended to inform us, what the omitted element was, (as this court, I trust will do if it finds any fault with the bill,) then we would have sought to remedy, the defect or to supply the omission, or to remove the objection.

The mere mention of *bonds* and *coupons* operated like the potions

31

39 of Circe, and made all concerned silent and docile captives. No antidote could avail against them. What self-destructive or annihilating quality, or principle is there in, or about the bill? If there is too much of it, we could have trimmed it down, and diminished it. If too little, we could have furnished more. We were ready to do almost anything that is not felonious, to meet the fancy of the court, to enable us to go on to a just and equitable decree. There was no physician to volunteer a diagnosis of the bill's disease, and no one ventured an opinion. The matter was disposed of in haste, and, just as though anything in the form or shape of bonds and coupons, were a fixed fact, a foregone conclusion—a thing adjudicated for all coming time.

III.

40 This case is widely different and materially distinguishable from any case that has ever made its appearance on record. The reading

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of the Bill shows this to be a fact. It will not do to aver that all bonds and coupons are valid. Nor that all promissory notes are so. A fool might make such an announcement. Were we to take up each and every reported case in which bonds and coupons have been adjudicated upon, we could point out wherein this case in some respects differs from each and every one of them. We will not, here,

perform that labor. But, aside from the fraud, corruption and collusion which taint these pretended bonds, and in which these defendants actually participated, as shown by the Bill, we show, when we open to the act of the Legislature, on which they profess to be based that they are *de facto* without any foundation.

41

IV.

These bonds upon their face, appear to be issued to "the *Wolf "River Branch Plank Road Company.*" And there is no act for the issue of bonds by the town of Grand Chute to "the *Wolf River "Branch Plank Road Company.*"

It is incumbent on the other side to show to the court the act, or authority for the issuing of the bonds. I claim that no such authority can be shown. But knowing what these bond holders pretend *is* authority, I shall call the attention of the court, to the act of the Legislature referred to on the face of the bonds, by and under which they purport to be issued. It is the act of February 10, 1854. (Chap. 40, of Private and local laws, of Wisconsin. (Law case, Rec fol. 80) 42
which purports to authorize the several towns therein named, under certain restrictions and conditions to subscribe to the capital stock—of what? "of the Wolf River Branch of the Winnebago Lake and "Fox River Plank Road Company," and *no other*, &c. &c. and to pay for the same in the bonds of said Town to be issued to said Company.

Now nobody, on behalf of said town, either fraudulently or otherwise, did subscribe to the capital stock of the "Wolf River Branch "of the Winnebago Lake and Fox River Plank Road Company," and no bonds were issued to said Company The inspection of the bonds show that they were issued to a very different Company, a Company not named in the act referred to in the preamble to said bonds, to wit, to the "Wolf River Branch Plank Road Company." 43
When we attempt to find any law, and especially the law authorizing the issuing of these bonds we fail. There are hundreds of pages of the local laws, but on none of them can these bonds be engrafted. And the Bill discloses this state of the case. They are an illegitimate spurious issue—a *nullius filius*. And even without their being tainted with fraud they would be void for want of a foundation in law. No empiricism of financial tactics, or engineering can avoid the fate to which the law consigns this spurious paper.

The bonds on their face, by a formal preamble, predicate their existence on the act of February 10, 1854, (see copy of bond, Rec. fol. 38, in law case.) The declaration (Rec. fol. 3) of Winegar's counsel, drawn up in careful elaborate form, refers to the same act, *and to no other*, as their foundation—the rock on which they stand. 44
That act, is the one only God on whom they depend. Taking their own word for it, which they are estopped from controverting, he, alone, created the pretended bonds, (see act of February 10, 1854. (Rec. fol. 80, of law case) a special plea (4th, Plea. Rec. fol. 53, law case) calls attention, in due form, to the fact, that no authority is granted by the act of February 10th to issue bonds to the *Wolf River Branch Plank Road Company*. The plaintiff awakes, rallies, con-

sults the ritual of Private acts of the Legislature, and, in his replication (Rec. fol. 67 of law case) to said fourth plea, concedes that his God of February 10th, 1854, had not the power to create, and did
45 not authorize the making of the bonds. But that really, it was a certain subsequent Deity that did the job—One, of February 21, 1854, who was unknown to the pleader, during the many years which had elapsed, and who had revealed himself in the emergency, just in time to relieve the bonds from being *without any paternity at all!*

The act of February 21, 1854 (Rec. fol. 86 of law case) purports to create a corporation by the name of "The President and Direc-"tors of the Wolf River Branch Plank Road Company." And then the act purports to give all the stock of the "Wolf River Branch of the "Winebago Lake and Fox River Plank Road Company" to the "*Wolf River Branch Plank Road*"

Such invention and coherence of law and legislation are not un-
46 worthy of a moot court and legislature of a respectable lunatic asylum.

It has been repeatedly held that a change in the route of a road, releases a stock-subscriber from his subscription.

(See Kenosha, Rockford and Rock Island R. R. Company, vs Marsh, 17 Wis. 13, and the cases there cited.) also
Plank Road Company vs. Arndt 31 Penn. St., 317. Hester vs. Memphis and Charleston R. R. Company 32 Miss. 378.

It does not comport with the duties of a court of equity, to mould and shape, or to revise and remodel, any hasty, stealthy legislation —to make it dovetail with such frandulent writings obligatory as these before us.

We may safely concede for the purposes of the argument, that all
47 legislation, and especially *Wisconsin* legislation is pure, and an unbiased expression of the governed. We may concede this, because, by no fair or reasonable construction, can any existing act, be made to tally with the documents sought to be enforced. And we guard the court against any forced construotions.

Yet the slightest knowledge of the history of legislation in Wisconsin forbids that the court should shut its eyes to fixed facts, and to the way and manner in which *special* legislation, fraudulent, corrupt legislation, has been and is brought about, and recorded in the volumes of local laws, with all of the apparent fairness and goodly outside, that these bonds and coupons possess.

In 1854, when this little Wolf Plank-road-Corporation-Swindle
48 was conceived against the quiet honest town of Grand Chute, and its unsuspecting people, the financial tactics were not perfected. It was but the fore-runner, and foreshadower of the grand schemes in the future. It was a mere reconnoitering skirmish, and experiment, prophetic of the general, wholesale slaughter. Its projectors were new, and wanted education. Their patchwork legislation shows it. By the failure of their miserable, transparent fraud, the accomplished financiers that were lookers on, and who soon took possession of the temple aud field of *speculation*, smiled at them in silent

derision and contempt and ruled them out of the fraternity. Their handiwork throughout, was a matter of disgust, and, by the "ring" was set down as a conception of "*honest men*," just turned rogues, who had better drop their *new* calling, and return to the *old* one, and who probably would do so. The "*bonds and coupons*" were voted a mere *caricature* of bogus stuff—of no value--a prostitution of the clean paper. Nobody ever thought of giving a cent for it. It was an index of lion-like courage, that the Union-Springs' man--the got-through-bankruptcy clerk of Mr. Backus, allowed himself to have them thrust upon him; entirely without consideration, and after he had resisted the puerile assault for months. The amiable noviciate took a "*bill of sale*," of the *negotiable, pay-to-bearer* documents, without ever seeing them or knowing where they were. Like the generous, self-sacrificing healthy friend of the quack doctor, who swallowed the medicated Esculapian potion out of fraternal patronage, and to enable him to furnish a "truthful" advertising certificate of his confidence, in his companions' professional skill and ability, the "teller" to the rural bank applied the bill-of-sale-plaster agreeably to the prescription, and furnishes his affidavit certificate of its virtue, and efficacy. To educated Wall street graduates--aye, to *freshmen*, the thing is a transparent ignominious farce. 49 50

It is the business of the court to bring to its aid all knowledge of events--of legislation, especially of the Wisconsin legislation that bears proximately upon the financial swindles that have cursed a tax burdened, impoverished people. And when, with its judicial telescope in hand it looks down into the elements, and discovers, that the very seed and germ of legislation have been poisoned—as in the case at bar--that the source and spring of the rivulet were corrupted --that the voters or enough of them to answer the purpose, by the cunning and devices of the arch fiend of avarice were decoyed into drinking the bewildering dose, and like the giants of dragon-teeth origin into facing about to complete each others destruction--it is, I say the business of the court, *though* blind in point of favoritism, to be argos-eyed, and to see all that can be seen: and then, like a philosopher, with the figures, angles and facts to calculate, and locate that which is not visible to the eye. We must not ignore legitimate inferences. The relation of effect to cause must be studied. The veil that covers fraud must be rent. No scheme or device is too sacred to admit of the judicial test. 51

These young stock raisers ought to have stuck to their virtuous callings, and not to have embarked in "wild cat" speculations.

The bonds are an effect. We examine, reason and trace them step by step, link by link, to their cause. On every track, on every link we find the seal and impress of the deceiver—the corruptor. And now we want a decree entered of record to protect us against the spurious documents.

Our argument claims that there is no legislative act for the issue of bonds to the "*Wolf River Branch Plank Road Company.*" Such non-provision, of course, is to the credit of the legislature. It furnishes no basis for the issue. But the sublime faith of these Plank Road corporators, which expects the *Judiciary, without such foundation*, to take the load of fraudulent paper on its shoulders, and 52

to leap the chasm to final judgment in their favor, challenges universal admiration.

In this case, this court of last resort, is afforded the rare opportunity to record its judgment against fraudulent bonds and coupons, *proved* and *confessed* to be in the hands—not of any *innocent purchaser*, but in the hands of their originators.

The repeated suits commenced by these parties--the spasmodic efforts to obtain judgments--the repeated failures--the long slumbering of years on the overdne, stale coupons--the final dodge into the rural retreat of Geo. W. Winegar, where a "*bill of sale*" was left, are so many small monuments of this small, patent effort of a rural plank-road trio to make money and to get rich by their wits. In the local courts where the thing is well understood from its origin, no judgment could be recovered--none ever has been recovered. And the strength of the defence against the paper is to make it understood abroad as well as it is at home. Why argue before this court about *bona fide* purchasers of this base stuff, when it would not stand a moment before a *Wall street tribunal.*

One phase of this bill is, that it is in part, a proceeding *in rem* The guilty *things* sought to be acted upon and against, are the bonds and coupons, in the hands of Geo. W. Winegar, of Union Springs, the plaintiff on the law-end of this case. We find the "*rem*" here in court, under the pretended ownership of Winegar.

(Bates vs. Delevan, 5 Paige, C. R. 304.)

The piratical effort on his part, and on the part of his auxiliaries and confederates, is made in this court. This is the forum, the battle-ground which they have selected. They make use of the arm of this tribunal--reach out after the town of Grand Chute, and bring it into that forum--upon that ground. The *thing* and the party asserting ownership (the New York man.) are, at their own instance, under the jurisdiction of the court. And while so, the other party, the town of Grand Chute which is held in court, humbly puts up its petition against the fraudulent *thing*, and, *ex necessitate*, against the party asserting its ownership; and further, *ex necessitate*, and incidentally against his confederates and auxiliaries. For some purposes they are all one; to-wit, for the purpose of seeking to enforce the collection of the fraudulent *thing*, which claims for its owner, a citizen of New York. Grand Chute, by its bill, seeks a decree *in rem*, to cancel the bonds, in the hands of Winegar, who has them in court, and, in *personam*, for costs against him, which costs are a mere incident and the result of his fraudulent action at law. The other defendants, Goodwin, Hewitt, and Conkey, are auxiliary and confederating parties, seeking to enfore the bonds. They come into court through the state of New York, under cover and behind Winegar's citizenship. They consolidate themselves into him. They are as necessarily one party as would be the Siamese twins, if they had the bonds. But if, from extreme modesty on the part of the court, towards these modest and honest confederates, the court should consider that it cannot render any decree, in *personam*, for mere costs, hen in that respect, we say let them go. They have had due notic

and their day in court. Shape the decree against the fraudulent *thing*, and against the citizen of New York, who *stands* as plaintiff.

(Bates vs. Delevan, 5 Paige, C. R. 304.)

If the extreme charity and tender consideration of the Chancelor towards this Janus-faced, multo-headed speculator, who holds the key to the temple of justice in one hand, and a scourge to harrass honest men in the other, are so timid, that they cannot venture to encounter more than *one* of his four heads. and faces, then dissect, divide, eliminate. Take the New York, Union Springs face, and let the surgeon do his work, and give us one sole bond-holder, though he be a sham, straw, windmill man, the mere shadow of the eliminated heads; and, in behalf of Grand Chute we will buckle on the insignia of royalty, and joust him with Quixotic chivalry. 57

What we protest agains is the tyrannical, absurd, though honest conclusion and decision, that in this case of the most glaring fraud, there is *no remedy*, and never was any!

Through all the contest not a ray of hope was evolved. The glaring words in Dante's Inferno, seem to have been the foreshadowed sentence against the doomed town of Grand Chute. 58

Even in all *original* proceedings that I have found, even, in actions at law against joint defendants, where, for any cause there is a misjoinder of parties defendants, courts have allowed the suits to proceed against the defendant legally and properly in court.

Carneal vs. Banks, 10, Wheat, 181. Wormley vs. Wormley, 8 Wheat, 421.)

In some instances, they have allowed the misjoined defendants to be stricken out as such, and to be made co-plaintiffs.

On the subject of jurisdiction, there are general rules as on other subjects. All general rules have their exceptions—more or less. Nice abstruse points arise, which have to be decided. Fraud, accident, mistake call for the exercise of equity jurisdiction. The law making power could not and did not foresee. or anticipate all the tricks and manœuvers and devices of modern avarice. If it had done so, it would have provided an express remedy. With the spirit of the lawmaking power lodged within its breast, the court of equity administers the remedy, which by *intendment*, was prescribed, and which would have been expressly provided for, in terms, had its necessity been foreseen. No one fraudulent plot or device of the usurer or stock-jobber is exactly like that of any other. The leaders of the gang, and their satellites are continually inventing new tricks for swindling honest men, without being adjudged felons. To say that the court must allow and confirm a fraud because, it is new—an improvement on all former frauds— because it is in skill—invention and polish, in advance of all that was ever before dreamed of, is a monstrous doctrine. *Civilly*, the court must be elastic enough to meet the emergency—to respond to the *improvement*. To do this is not exceeding its jurisdiction. When, *not to act*—not to advance involves and absurdity, then the court *must act, must advance*. Action, advancement, imply re-action and re-advancement. Rational progress has abandoned the old theory that to entertain jurisdiction when 59 60

a corporation is a party the court must first decide on the residence, or domicil, of the corporators, and also the theory that for a steam boat, to be engaged in commerce, it must actually navigate from one
4. state to another. To say that Goodwin, Hewitt and Conkey can harness themselves behind Winegar, and that this quartette can
61 couple their train to the gigantic engine, called the Federal Court, and charter it for their sole exclusive use and benefit, and can run a deadly charge against the town of Grand Chute, with themselves for engineers, brakemen and switchtenders, without any reservation of power to the engine to back—to reverse—to change or modify its course—or the action of the quartette company—without the least power "to turn the tables" upon these managers, in case they are all discovered to be renegades, and jurisdictional pirates, involves a palpable absurdity. That very absurdity lies covered up in the decree dismissing this bill.

We say that in respect to persons *covertly*, in court, as plaintiffs,
4 under another's citizenship, assailing a municipal corporation of Wisconsin, as defendant, the *general* jurisdictional rule does not apply.
62 Such operation opens the way to a slight exception to the rule, that the court can act only as between citizens of different states.—If the rule has been violated in this case, whose fault is it? I answer, it is the fault of the parties plaintiff in the action at law.

Suppose the rule to be that the court has jurisdiction only between sole plaintiffs and sole defendants; and suppose that John Smiths sued the town of Grand Chute. The action proceeds and in order to make the defendants defence available, the defendant is obliged to become the actor in equity and in so doing discovers John Smiths plurality and proves the fact, would not the court re-act on this plurality of plaintiffs, at least to the extent of *refraining* to *act on to judgment* against the town of Grand Chute?

47 The court below answers—"No, "John Smiths, George W.
63 "Winegar, and all such names indicate *sole* plaintiffs even though "they do *admit their own plurality!*"

Again, suppose, John Smiths to be a sort of *lusus naturae* with four heads, limbs, &c. enough, if well divided up and put together to make four respectable men,—all so adroitly concealed, that, even when in court, he looked just like a sole man. And, suppose that all of a sudden, he should be exposed to the court in his naked monstrosity and plurality of four separate and distinct persons——what would the court do? The court below answers—"the town of Grand Chute shall not react be he *one* or *four* persons "or defend "against *John Smiths*. John Smiths must have judgment,
48 "because the court "has not jurisdiction,—A JUDICIAL FELO-DE-SE!

64 Substitute Geo. W. Winegar, in the place of John Smiths, and we have a counterpart of the judgment of the court. Now we claim for the court sufficient elasticity, ability, and power to adapt itself to each case, without doing violence to legal principles. Though when new questions, arise, as Blackstone, who was a philosophic and progressive judge, remarks, "the wisdom of the times must provide "new remedies for new emergencies."

Were the jurisdictional question a new one, arising from the

development of a new phase of fraud in human transactions, I should still argue with confidence, that the court too, must progress, increase its speed, keep pace with the progressive fraud, and administer the equitable corrective. There is no ursupation about that doctrine. There is no novelty in the principle. Though to the court below its application is probally regarded as our exclusive invention. In 65
this the court errred. The doctrine that when a court entertains jurisdiction of a case, and of the parties, there is a judicial freedom and reciprocity of action between the parties litigant, so as to reach to the root and to the merits of the whole matter, is not new, or unheard of. All objections are met by the fact that the bill is not an *original suit*, but a mere amplification and development of the action at law. Were not this so, we could not have reached Winegar, for want of service of process on him, he being an inhabitant of New York.

There is no pretence that the court was not unbiased in its administeration, but, necessarily saw that the case involved knotty points; and, as it were, to avoid any disturbance of the reasoning faculties, took the shortest route to untie the knot; and, Alexander- 66
like, with sword in hand, severed the rope, at one stroke.

This Procrustean equalizer of bonds, like the great equailizer of the members of the human family, brought mechanical and physical ability into operation, and stretched the bonds to the requisite measure, and, by one drop of the axe, chopped off the head of Grand Chute, at exactly the same point.

For *labor-saving* in dispensing law, there is nothing like dispensing with reason. Though, as we cannot indorse the logic, law or justice of the heads-man, charity which thinketh no evil, prompts us to give credit for unwonted dispatch, and all of the kindred virtues.

The legal and logical deductions are,

1st—That the bill is not the commencement of an *orignal* suit, 67
but an equity proceeding, necessitated by, and growing out of, and part and parcel of the action an law, and only a development of the real facts pertaining thereto.

2nd—That the court having entertained jurisdiction of the action at law, must, *ex necessitate*, entertain jurisdiction, when it is prepresented on the equity side of the same court, craving a discovery, and showing a case of fraud wherein there is no adequate remedy at law.

3rd—That the real parties in both forms of action are indentical, and the things sought to be acted on are indentical. And the plaintiffs in the action at law, having deceived the court into the exercise of jurisdiction are now precluded from controverting it, 68
having waived all objections to the jurisdiction, if any existed.

4th—That, if there is a misjoinder of defendants in the bill (which is denied) it is competent for the court to proceed to a decree *in rem*, in respect to the subject of the action, and, *in personam*, in respect to such of the parties defendants, of whom *it has jurisdiction*.

5th—That the bill discloses a state of facts on which the court is

bound to act upon the merits of the case, and to grant the prayer of the complainant.

6th—That the decree dismissing the bill, upon the allegations
69 thereof, *admitted to be true*, to wit, upon the demurrer to the *whole*
4 *bill*, must be reversed.

Thus have I labored, in argument, to reach points which seem to me to be almost axiomatic. Thus do I contend for a right and a remedy in the law, which, it seems to me ought to have been allowed without contention : and to secure which the Town of Grand Chute is compelled to battle her way through to the national Capitol to this court of last resort.

There she stands, a suppliant. If she is here in vain, then, indeed have her faith and her hope failed—but—only until the advent of the patriotic, divine genius of the revolution now already throbbing
70 in the womb of time shall have asserted her rightful dominion over
4 the destiny of her people—shall have purged the Augean halls of legislation—shall have stamped on their tenants the impress of the truthful—the Godly ; shall have driven out the office venders—procurers—stock jobbers and money-changers from the Temple—shall have wrought out of corruption, the incorruptable and redeemed honest labor from the curse and virus of sordid avarice and soulless speculation.

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United States Supreme Court.

THE TOWN OF GRAND CHUTE, *Appellant*,

AGAINST

GEORGE W. WINEGAR, *et al.*

IN EQUITY.

Reply to Printed Argument of Respondent's Counsel.

It is argued that the bill was properly dismissed, on demurrer, because it shows that Winegar, the New York citizen, is not a *real* but a mere *pretended*, or fraudulent holder of the bonds. And, that being true, and Winegar, being eliminated, as one having no interest in the bonds on which he has brought suit, and in which he stands as sole plaintiff, in the action at law, the bill stands as presenting a controversy between parties, all citizens of Wisconsin, and thereby ousting the Court of jurisdiction.

In reply, we say that although Winegar is a sham and fraudulent party, and a mere cover for his confederates, yet he stands in Court,

claiming to be the sole *real party* in interest, and as such, obtains judgment. The argument of the opposition is, that, to show him in his real fraudulent character, ousts the Court of jurisdiction ! whereas, in truth, it has the contrary effect, in a defensive bill.

Counsel have not discriminated between this, and an original suit, and, they seem to treat it as such, when a careful view of the cases shows, that the Town of Grand Chute, is merely defending against certain fraudulent confederating parties who are masked behind Winegar In such a "*defensive auxiliary* suit in the nature of a cross-bill, or bill "filed to enjoin a judgment of the same Court,—*the Court has jurisdic-*"*tion irrespective of the residence of the parties.*" The decisions are uniform on that point. It is difficult to see how they could be otherwise.

The case of McNutt *vs.* Bland, 2. How , 13, cited by Counsel, was a suit on a Mississippi Sheriff's Bond. The point decided is, that a citizen of another State could sue a citizen of Mississippi, in the Federal Court, although the bond runs to the Governor of the State of Mississippi, who is a citizen of the same State with the defendant.

The next case cited is Wood, *et al, vs.* Davis, 18. How., 467. That was an *original* bill, filed in the State Court, by Davis, a citizen of Illinois, against Wood and others, citizens of Pennsylvania, and joined four others as co-defendants who were citizens of Illinois. The suit was removed to the Federal Court, and the Federal Court remanded it to the State Court, where the original bill was filed and where the suit was commenced. The Appellate Court decided that the remanding of the case back to the State Court was error. That the Federal Court had jurisdiction, notwithstanding some of the persons who were made co-defendants were citizens of Illinois, as was also the complainant.

It is difficult to see how the Counsel can extract any aid or comfort from that decision.

In the II. subdivision of the Counsel's argument, the ground is taken that "the Court has no jurisdiction over the subject matter of the suit," there being an adequate remedy at law. It does not follow that Equity jurisdiction is ousted, merely because the Town may succeed in its defence at law. The reasoning of Mr. Justice Swayne, in an opinion delivered from the bench, November 25th, 1872, (have not names of parties,) is to the point. Our bill presents a case of fraud and vexatious litigation, wherein the confederating parties seek to cover and conceal their acts. The bill seeks a discovery, and also protection against a multiplicity of suits. It shows that the Town has already been harassed by repeated suits in different Courts and by different parties. That the bonds are void, on their face, when taken in connection with the act of the Legislature, on which they profess to be founded, does not avail against Equity jurisdiction. They read like valid paper, as does a counterfeit bank note, and are calculated to deceive, and if they again get afloat, honest men are likely to be duped by them, and to be the sufferers, and no one more the sufferer than the Town of Grand Chute.

Read the bill, and the grounds of Equitable interference will be manifest.

The case of Hipp, *et al*, *vs.* Babin, 19. How., 271, (which quotes Lord Chancelor Lyndhurst's remarks,) is the last remaining case cited by Counsel. That was an original Bill in Equity to *recover land.* The Court decides against the bill, and says, that "it is in effect an *ejectment* "*bill.* The title is *merely legal.* No circumstances are shown for "equitable interference, for preventing suits, or other vexation, or for "preventing an injustice, irremediable at law."

That was good law, logic, and sound reasoning from the premises. The case at Bar is no such case, and has no one point of analogy to that of Hipp *vs.* Babin.

Thus do I notice, *seriatim,* every case and authority cited by opposing Counsel in his printed argument and brief with which I have been favored. Whether, or not, they, or any of them contribute to disturb this *defensive auxiliary* bill in Equity, is for the Court to decide.

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